IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL APPLICATION NO.1140 OF 2006
IN
FIRST APPEAL ST.NO.20081 OF 2005
IN
M.A.C.T.PETITION NO.1114 OF 1998

M/s.The New India Assurance Co.Ltd. ..Applicant
v/s.
Smt.Bhavani Vasan Anant Krishnan
and others .. Respondents

Ms.Ratna Bhargavan i/by M/s.R.Bhargavan & Associates for the applicant.

Mr.M.B.Kotak for the respondent Nos.1 to 4.

CORAM : R.M. LODHA &
A.S.BAGGA, JJ.

DATED : 6TH JUNE, 2006.

P.C.

Since the counsel for the respondent Nos.1 to 4 submitted that the application for condonation of delay may be heard without supply of copy to him, we heard the counsel for the appellant in support of the application for condonation of delay and the counsel for the respondent Nos.1 to 4 in opposition thereto.

2. The New India Assurance Company-appellant suffered the award passed by the Motor Accident Claims Tribunal, Mumbai on 10th March, 2005. Aggrieved thereby, the insurance company has preferred the appeal. The appeal was filed on 31st August, 2005.

As the appeal suffered from delay of about 28 days, the appellant has made the present application for condonation of delay in filing the appeal. According to the appellant, the application for obtaining certified copy of the judgment and award dated 10th March, 2005 was made on 4th April, 2005. The certified copy of the judgment and award was ready on 4th May, 2005 and received by the appellant on 5th May, 2005. The insurance company then referred the matter to the attending lawyer Mr.S.R.Singh for scrutiny and advice on whether to honour the award or prefer any appeal. The advice for filing the appeal was given by the advocate and the sanction from the Regional Office was obtained. The matter was then sent to the advocate for drafting the appeal and then the appeal has been preferred.

3. The facts stated in the application for condonation of delay remain untraversed. Upon careful consideration of the said facts set out in the application, we are of the view that the appellant was not negligent in prosecuting the matter and the delay occurred due to the time taken by the Advocate in giving his advice and the sanction by the Regional office. The explanation is excusable and make out sufficient cause.

4. The counsel for the claimants, however, invited our attention to the two decisions of Rajasthan High Court; (i) New India

Assurance Co.Ltd. v. Vijaybhai Laxmanbhai Solanki and others, 2000 ACJ 302 and (ii) New India Assurance Co.Ltd. and others v.Keshar and others, 1996 ACJ 1057.

5. In the case of Kesar and others (supra), the Single Judge of the Rajasthan High Court observed that if the delay is condoned mechanically on the ground of administrative exigencies then in almost all cases, the court has to condone the delay.

6. In the case of Vijaybhai Laxmanbhai Solanki (supra), it was held by the Single Judge of the Rajasthan High Court that where the insurance company has dealt with the matter leisurely, carelessly and casually, there was no sufficient cause to condone the delay.

7. We do no better than refer the judgment of the Supreme Court in the case of Collector, Land Acquisition, Anantnag and another v. Mst.Katiji and others, AIR 1987 SC 1353 wherein the Supreme Court highlighted the approach concerning the application for condonation of delay. The Supreme Court observed thus-

> "1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
>
> 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As

> against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
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> 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
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> 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
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> 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
>
> 6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

8. Though the aforesaid matter before Supreme Court concerned the State Government, the observations aforenoticed are equally applicable to the company like the appellant where the decision is taken at various levels.

9. We have already observed that the facts obtaining in the present case show that the appellant has been acting diligently in pursuing the matter and not carelessly, leisurely or casually as the matter was before the Rajasthan High Court. Whether the

appellant has been able to make out sufficient cause for condonation of delay or not depends on the facts of each case. In the present case, the facts set out in the application do make out sufficient cause justifying condonation of delay.

10. We, accordingly, condone the delay in filing the appeal.

11. Civil application stands disposed of.

12. Office is directed to process the appeal and post it for admission.

(R.M.LODHA, J.)

(A.S.BAGGA, J.)